

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**

**DUWANE ROY BARKER,**

Petitioner,

v.

**BOARD OF PAROLE AND POST PRISON  
SUPERVISION,**

Respondent.

Case No. 3:19-cv-0404-SU

**ORDER**

**Michael H. Simon, District Judge.**

United States Magistrate Judge Patricia Sullivan issued Findings and Recommendations in this case on December 18th, 2019. ECF 39. Magistrate Judge Sullivan recommended that Petitioner Duwane Roy Barker's Petition for Writ of Habeas Corpus (ECF 2), Motion for Evidentiary Hearing (ECF 32), and Motion to Strike (ECF 35) should be denied, that the case should be dismissed with prejudice, and that no certificate of appealability should issue. No party has filed objections.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Sullivan’s Findings and Recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Magistrate Judge Sullivan’s Findings and Recommendations, ECF 39. Petitioner’s Petition for Writ of Habeas Corpus (ECF 2), Motion for Evidentiary Hearing (ECF 32), and Motion to Strike (ECF 35) are **DENIED** and the case is **DISMISSED WITH PREJUDICE**. The Court declines

to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED.**

DATED this 28th day of January, 2020.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge